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21 *[Additional Defendants and Counsel*
22 *Listed on Signature Pages]*

23 UNITED STATES DISTRICT COURT
24 NORTHERN DISTRICT OF CALIFORNIA
25 OAKLAND DIVISION

26 IN RE CALIFORNIA BAIL BOND
27 ANTITRUST LITIGATION

Master Docket No. 19-cv-00717-JST

CLASS ACTION

28 THIS DOCUMENT RELATES TO:
ALL ACTIONS

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEFENDANTS' MOTION TO
DISMISS PLAINTIFFS' SECOND
CONSOLIDATED AMENDED CLASS ACTION
COMPLAINT**

Judge: Hon. Jon S. Tigar
Hearing Date: August 26, 2020
Courtroom: 2, 4th Floor
Time: 2:00 p.m.
Trial Date: Not Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Federal Rule of Evidence 201, Defendants hereby request that the Court take judicial notice of the following documents in support of Defendants' concurrently filed Motion to Dismiss. The exhibit references below correspond to the exhibits attached to the Declaration of Max Sladek de la Cal (the "Declaration") filed concurrently herewith:

- Exhibit 1: A true and correct copy of an excerpt of the publicly available California Department of Insurance (CDI) Filing No. 13-6170,¹ submitted by Defendant Accredited Surety and Casualty Company to the CDI on August 19, 2013
- Exhibit 2: A true and correct copy of an excerpt of the publicly available CDI Filing No. 10-5444, submitted by Defendant Accredited Surety and Casualty Company to the CDI on July 23, 2010
- Exhibit 3: A true and correct copy of an excerpt of the publicly available CDI Filing No. 97-10504, submitted by Defendant Accredited Surety and Casualty Company to the CDI on November 12, 1997
- Exhibit 4: A true and correct copy of an excerpt of the publicly available CDI Filing Nos. 17-4681, 17-6595, submitted by Defendant Allegheny Casualty Company to the CDI on July 10, 2017
- Exhibit 5: A true and correct copy of an excerpt of the publicly available CDI Filing Nos. 13-4507, 13-4508, submitted by Defendant Allegheny Casualty Company to the CDI on June 17, 2013
- Exhibit 6: A true and correct copy of an excerpt of the publicly available CDI Filing No. 08-2395, submitted by Defendant American Contractors Indemnity Company to the CDI on February 11, 2008
- Exhibit 7: A true and correct copy of an excerpt of the publicly available CDI Filing No. 95-4409, submitted by Defendant American Contractors Indemnity Company to the CDI on June 1, 1995
- Exhibit 8: A true and correct copy of an excerpt of the publicly available CDI Filing No. 94-682, submitted by Defendant American Surety Company to the CDI on February 1, 1994
- Exhibit 9: A true and correct copy of an excerpt of the publicly available CDI Filing No. 18-5155, submitted by Defendant Bankers Insurance Company to the CDI on October 10, 2018
- Exhibit 10: A true and correct copy of an excerpt of the publicly available CDI Filing No. 13-7036, submitted by Defendant Bankers Insurance Company to the CDI on September 25, 2013
- Exhibit 11: A true and correct copy of an excerpt of the publicly available CDI Filing

¹ Given the size and length of these documents, Defendants have excerpted the rate filings submitted as Exhibits 1 through 51 for the Court's convenience and included only the cover pages, the "Filing at a Glance" pages, the relevant rate schedule page(s), and in some cases, portions quoted or referenced in the SCAC or Defendants' Motion to Dismiss. Defendants are prepared to submit the filings in their entirety should the Court so wish.

- 1 No. 09-4748, submitted by Defendant Bankers Insurance Company to the
2 CDI on June 10, 2009
- 3 Exhibit 12: A true and correct copy of an excerpt of the publicly available CDI Filing
4 No. 07-838, submitted by Defendant Bankers Insurance Company to the
5 CDI on January 25, 2007
- 6 Exhibit 13: A true and correct copy of an excerpt of the publicly available CDI Filing
7 No. 05-5598, submitted by Defendant Bankers Insurance Company to the
8 CDI on July 15, 2005
- 9 Exhibit 14: A true and correct copy of an excerpt of the publicly available CDI Filing
10 No. 03-11, submitted by Defendant Bankers Insurance Company to the
11 CDI on December 20, 2002
- 12 Exhibit 15: A true and correct copy of an excerpt of the publicly available CDI Filing
13 No. 01-3860, submitted by Defendant Bankers Insurance Company to the
14 CDI on March 27, 2001
- 15 Exhibit 16: A true and correct copy of an excerpt of the publicly available CDI Filing
16 No. 17-1995, submitted by Defendant Continental Heritage Insurance
17 Company to the CDI on March 20, 2017
- 18 Exhibit 17: A true and correct copy of an excerpt of the publicly available CDI Filing
19 No. 12-6468, submitted by Defendant Continental Heritage Insurance
20 Company to the CDI on August 13, 2012
- 21 Exhibit 18: A true and correct copy of an excerpt of the publicly available CDI Filing
22 No. 09-3983, submitted by Defendant Continental Heritage Insurance
23 Company to the CDI on May 7, 2009
- 24 Exhibit 19: A true and correct copy of an excerpt of the publicly available CDI Filing
25 No. 04-7961, submitted by Defendant Continental Heritage Insurance
26 Company to the CDI on November 5, 2004
- 27 Exhibit 20: A true and correct copy of an excerpt of the publicly available CDI Filing
28 No. 99-13986, submitted by Defendant Continental Heritage Insurance
Company to the CDI on November 8, 1999
- Exhibit 21: A true and correct copy of an excerpt of the publicly available CDI Filing
No. 11-1995, submitted by Defendant Danielson National Insurance
Company to the CDI on February 22, 2011
- Exhibit 22: A true and correct copy of an excerpt of the publicly available CDI Filing
No. 11-1385, submitted by Defendant Danielson National Insurance
Company to the CDI on February 2, 2011
- Exhibit 23: A true and correct copy of an excerpt of the publicly available CDI Filing
No. 08-1743, submitted by Defendant Danielson National Insurance
Company to the CDI on January 31, 2008
- Exhibit 24: A true and correct copy of an excerpt of the publicly available CDI Filing
No. 18-2776, submitted by Defendant Financial Casualty & Surety, Inc.
to the CDI on May 11, 2018
- Exhibit 25: A true and correct copy of an excerpt of the publicly available CDI Filing
No. 14-7527, submitted by Defendant Financial Casualty & Surety, Inc.
to the CDI on October 8, 2014
- Exhibit 26: A true and correct copy of an excerpt of the publicly available CDI Filing
No. 04-8381, submitted by Defendant Financial Casualty & Surety, Inc.
to the CDI on November 17, 2004
- Exhibit 27: A true and correct copy of an excerpt of the publicly available CDI Filing

- 1 No. 05-6589, submitted by Defendant Indiana Lumbermens Mutual
2 Exhibit 28: Insurance Company to the CDI on August 24, 2005
3 A true and correct copy of an excerpt of the publicly available CDI Filing
4 Exhibit 29: Nos. 17-4681, 17-6595, submitted by Defendant International Fidelity
5 Insurance Company to the CDI on July 10, 2017
6 Exhibit 30: A true and correct copy of an excerpt of the publicly available CDI Filing
7 Nos. 13-4507, 13-4508, submitted by Defendant International Fidelity
8 Insurance Company to the CDI on June 17, 2013
9 Exhibit 31: A true and correct copy of an excerpt of the publicly available CDI Filing
10 No. 15-10267, submitted by Defendant Lexington National Insurance
11 Company to the CDI on November 18, 2015
12 Exhibit 32: A true and correct copy of an excerpt of the publicly available CDI Filing
13 No. 06-8729, submitted by Defendant Lexington National Insurance
14 Company to the CDI on August 26, 2009
15 Exhibit 33: A true and correct copy of an excerpt of the publicly available CDI Filing
16 No. 03-3414, submitted by Defendant Lexington National Insurance
17 Company to the CDI on May 19, 2003
18 Exhibit 34: A true and correct copy of an excerpt of the publicly available CDI Filing
19 Nos. 11-5648, submitted by Defendant Lexon Insurance Company to the
20 CDI on June 27, 2011
21 Exhibit 35: A true and correct copy of an excerpt of the publicly available CDI Filing
22 Nos. 13-3655, 13-3656, 13-3657, submitted by Defendant The North
23 River Insurance Company to the CDI on May 7, 2013
24 Exhibit 36: A true and correct copy of an excerpt of the publicly available CDI Filing
25 Nos. 12-724, 12-725, 12-726, submitted by Defendant The North River
26 Insurance Company to the CDI on January 19, 2012
27 Exhibit 37: A true and correct copy of an excerpt of the publicly available CDI Filing
28 Nos. 07-4496, 07-4497, submitted by Defendant The North River
Insurance Company to the CDI on May 4, 2007
Exhibit 38: A true and correct copy of an excerpt of the publicly available CDI Filing
Nos. 06-1938, 06-1939, submitted by Defendant The North River
Insurance Company to the CDI on March 11, 2006
Exhibit 39: A true and correct copy of an excerpt of the publicly available CDI Filing
No. 16-3207, submitted by Defendant Philadelphia Reinsurance
Corporation to the CDI on May 27, 2016
Exhibit 40: A true and correct copy of an excerpt of the publicly available CDI Filing
No. 11-6920, submitted by Defendant Seaview Surety Holding, Inc. to
the CDI on July 29, 2011
Exhibit 41: A true and correct copy of an excerpt of the publicly available CDI Filing
No. 18-3953, submitted by Defendant Seneca Insurance Company to the
CDI on July 24, 2018
Exhibit 42: A true and correct copy of an excerpt of the publicly available CDI Filing
No. 07-6650, submitted by Defendant Seneca Insurance Company to the
CDI on October 18, 2007
Exhibit 43: A true and correct copy of an excerpt of the publicly available CDI Filing
No. 05-1194, submitted by Defendant Seneca Insurance Company to the
CDI on February 1, 2005
A true and correct copy of an excerpt of the publicly available CDI Filing

1 No. 03-5751, submitted by Defendant Seneca Insurance Company to the
2 CDI on August 4, 2003
3 Exhibit 44: A true and correct copy of an excerpt of the publicly available CDI Filing
4 No. 17-20, submitted by Defendant Sun Surety Insurance Company to
5 the CDI on December 22, 2016
6 Exhibit 45: A true and correct copy of an excerpt of the publicly available CDI Filing
7 No. 08-11696, submitted by Defendant Sun Surety Insurance Company
8 to the CDI on August 17, 2008
9 Exhibit 46: A true and correct copy of an excerpt of the publicly available CDI Filing
10 Nos. 13-3655, 13-3656, 13-3657, submitted by Defendant United States
11 Fire Insurance Company to the CDI on May 7, 2013
12 Exhibit 47: A true and correct copy of an excerpt of the publicly available CDI Filing
13 Nos. 12-724, 12-725, 12-726, submitted by Defendant United States Fire
14 Insurance Company to the CDI on January 19, 2012
15 Exhibit 48: A true and correct copy of an excerpt of the publicly available CDI Filing
16 Nos. 07-4496, 07-4497, submitted by Defendant United States Fire
17 Insurance Company to the CDI on May 4, 2007
18 Exhibit 49: A true and correct copy of an excerpt of the publicly available CDI Filing
19 Nos. 06-1938, 06-1939, submitted by Defendant United States Fire
20 Insurance Company to the CDI on March 11, 2006
21 Exhibit 50: A true and correct copy of an excerpt of the publicly available CDI Filing
22 No. 17-7130, submitted by Defendant Universal Fire & Casualty
23 Insurance Company to the CDI on October 10, 2017
24 Exhibit 51: A true and correct copy of an excerpt of the publicly available CDI Filing
25 No. 11-1622, submitted by Defendant Williamsburg National Insurance
26 Company to the CDI on February 4, 2011
27 Exhibit 52: A true and correct copy of the Annual Statement For the Year Ended
28 December 31, 2018, submitted to the CDI by Defendant Continental
Heritage Insurance Company

1 **I. BACKGROUND**

2 The Second Consolidated Amended Class Action Complaint (the “SCAC”) includes numerous
3 allegations about the premium rates charged by the Surety Defendants for the issuance of bail bonds
4 from 2004 to the present (the alleged class period). Plaintiffs rely on these premium rates to underpin
5 their claim that the Surety Defendants conspired to maintain a “near[] uniform” 10% premium rate
6 across the bail bond industry. (SCAC ¶ 7.) Plaintiffs have prepared a “Timeline of Standard Premium
7 Rates Charged by Defendant Sureties.” (*Id.*) This timeline—which relies on the Defendants’ publicly
8 available rate filings with the California Department of Insurance (CDI)—forms the cornerstone of
9 Plaintiffs’ claims. Plaintiffs also rely heavily on the rate notices that the Surety Defendants include in
10 the CDI premium rate filings. (*See, e.g., id.* ¶ 8 (including excerpts of 11 separate rate notices that
11 “the Surety Defendants require their agents to post in their retail offices”).) Additionally, the SCAC
12 relies throughout on financial data submitted to the CDI by the Surety Defendants. (*See, e.g., id.* at ¶
13 159 (allegations specifically based on “ASC’s annual financial disclosures filed with the CDI”); ¶ 170
14 (same); ¶ 182 (same).)

15 In the previous round of motion to dismiss briefing, the Court granted Defendants’ request for
16 judicial notice of two web pages, on the basis that “web pages themselves are judicially noticeable as
17 a general matter.” (ECF No. 91, Order Granting in Part and Denying in Part Motions to Dismiss
18 (“Order”) at 6 (citing *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998-99 (9th Cir. 2010).) The
19 Court also granted Plaintiffs’ request for judicial notice of certain “documents currently or formerly
20 available on publicly accessible websites.” (Order at 6.) The Court noted “that a document is not
21 judicially noticeable simply because it appears on a publicly available website,” but granted judicial
22 notice based on the incorporation by reference doctrine, given the parties’ use of the contents of the
23 documents. (*Id.* at 6 (citing *Rollins v. Dignity Health*, 338 F. Supp. 3d 1025, 1032 (N.D. Cal. 2018).)
24 Finally, the Court granted Plaintiffs’ request to judicially notice an excerpt from a CDI rate review
25 file. (*Id.* at 7.) The same justifications for judicial notice apply here: the premium rate filings are
26 publicly available on the CDI website and Plaintiffs have made extensive use of the information
27 contained therein to support the allegations in the SCAC.

28 //

II. ARGUMENT

A. Legal Standard

When ruling on a motion to dismiss, a court may consider any matter that is subject to judicial notice or incorporated by reference into the complaint. *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 503-04 (9th Cir. 1986); *see United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (“A court may . . . consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment.”). Judicial notice is appropriate for facts “not subject to reasonable dispute” that are either generally known within the jurisdiction of the trial court, or “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). This is true even if the plaintiff does not explicitly allege the contents of the particular documents in the complaint. *See Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005). Under this standard, a court may take judicial notice of “records and reports of administrative bodies.” *Wible v. Aetna Life Ins. Co.*, 375 F. Supp. 2d 956, 965 (C.D. Cal. 2005) (citing *Interstate Natural Gas Co. v. Southern California Gas Co.*, 209 F.2d 380, 385 (9th Cir.1953)).

The incorporation by reference doctrine allows the Court to consider documents not attached to the complaint “if the plaintiff refers extensively to the document or the document forms the basis of the plaintiff’s claim.” *Ritchie*, 342 F.3d at 908 (9th Cir. 2003). The doctrine extends to circumstances where “the plaintiff’s claim depends on the contents of a document, the defendant attaches the document to its motion to dismiss, and the parties do not dispute the authenticity of the document, even though the plaintiff does not explicitly allege the contents of that document in the complaint.” *Hong v. AXA Equitable Life Ins. Co.*, 2018 WL 6331012, at *2 (N.D. Cal. Dec. 4, 2018) (Tigar, J.) (citing *Knievel*, 393 F.3d at 1076 (9th Cir. 2005)).

B. The Court Should Take Judicial Notice of the Surety Defendants’ Rate Filings and Financial Disclosures

Exhibits 1 through 51 attached to the Declaration are excerpted premium rate filings submitted by the Surety Defendants to the CDI.² These filings are publicly available on the Web Access to Rate

² Given the size and length of these documents, Defendants have excerpted the rate filings submitted

1 and Form Filings (WARFF) system, which is available via the CDI's website at
2 <http://www.insurance.ca.gov/0250-insurers/0800-rate-filings/0050-viewing-room/>. Exhibit 52 is a
3 copy of the "Annual Statement For the Year Ended December 31, 2018," submitted to the CDI by
4 Defendant Continental Heritage Insurance Company, publicly available on the CDI's website at
5 [https://interactive.web.insurance.ca.gov/sdrive/companyprofile/2018/propertyAndCasualty/annual/3](https://interactive.web.insurance.ca.gov/sdrive/companyprofile/2018/propertyAndCasualty/annual/39551.2018.P.AN.PK.O.M.3642092.pdf)
6 9551.2018.P.AN.PK.O.M.3642092.pdf.

7 Under Federal Rule of Evidence 201, the court can take judicial notice of "[p]ublic records and
8 government documents available from reliable sources on the Internet," such as websites run by
9 governmental agencies. *Gerritsen v. Warner Bros. Entm't Inc.*, 112 F. Supp. 3d 1011, 1033 (C.D. Cal.
10 2015). This is because the accuracy of the results of records searches of government websites "can be
11 determined by readily accessible resources whose accuracy cannot reasonably be questioned." Fed.
12 R. Evid. 201(B)(2); *see also L'Garde, Inc. v. Raytheon Space & Airborne Sys.*, 805 F. Supp. 2d 932,
13 938 (C.D. Cal. 2011). The court may take judicial notice "at any stage of the proceeding." Fed. R.
14 Evid. 201(d). And the court "must take judicial notice if a party requests it and the court is supplied
15 with the necessary information." Fed. R. Evid. 201(c).

16 Moreover, the Court may take judicial notice of matters of public record, including materials
17 filed before the CDI. *See Moore v. Navarro*, No. C 00-03213 MMC, 2004 WL 783104, at *2 (N.D.
18 Cal. Mar. 31, 2004) (citing *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir.
19 1986)); *see also Mike Rose's Auto Body, Inc. v. Applied Underwriters Captive Risk Assurance Co.,*
20 *Inc.*, No. 16-cv-01864-EMC, 2016 WL 5407898, at *2 (N.D. Cal. Sept. 28, 2016) (taking judicial
21 notice of decision by the California Insurance Commissioner because its existence is capable of
22 accurate and ready determination by resort to sources whose accuracy cannot reasonably be
23 questioned); *Faragi v. Provident Life & Acc. Inc. Co.*, 161 F. App'x 649, 650 (9th Cir. 2005) (taking
24 judicial notice of records from the California Insurance Commissioner). The Court should therefore
25

26 as Exhibits 1 through 51 for the Court's convenience and included only the cover pages, the "Filing at
27 a Glance" pages, the relevant rate schedule page(s), and in some cases, portions quoted or referenced
28 in the SCAC or Defendants' Motion to Dismiss. Defendants also include the relevant rate notices that
Plaintiffs refer to in the SCAC. (*See, e.g., SCAC* ¶ 8.) Defendants are prepared to submit the filings
in their entirety should the Court so wish.

1 take judicial notice of the premium rate filings and financial disclosures submitted as Exhibits 1-52.

2 **C. The Surety Defendants' Rate Filings and Financial Disclosures Are Incorporated**
3 **by Reference**

4 The Court may also take judicial notice of Defendants' CDI premium rate filings and financial
5 disclosures because they are incorporated by reference.

6 The Ninth Circuit has applied the incorporation by reference doctrine to "situations in which
7 the plaintiff's claim depends on the contents of a document, the defendant attaches the document to
8 its motion to dismiss, and the parties do not dispute the authenticity of the document, even though the
9 plaintiff does not explicitly allege the contents of that document in the complaint." *Knivel*, 393 F.3d
10 at 1076. Here, Plaintiffs rely extensively on the contents of the Surety Defendants' rate filings and
11 financial disclosures available on the CDI website to support their conspiracy claims. (*See supra* Part
12 I.) While the SCAC does not attach the rate filings to the SCAC, Plaintiffs' claims fundamentally rely
13 on the contents of these filings. The core allegation in the SCAC is that Defendants have conspired to
14 fix the premium rates filed with the CDI at 10%. (*See* SCAC ¶ 7.) The SCAC specifically references
15 the contents of various types of CDI filings, including premium rate filings, at least a dozen times.
16 (*See, e.g., id.* ¶¶ 103, 107, 139, 156, 159.) Plaintiffs cannot plausibly argue that they have obtained
17 the Surety Defendants' premium rate schedules from any other source but the CDI filings themselves.
18 Nor can Plaintiffs reasonably dispute the contents of the filings available on the CDI website. As
19 Plaintiffs explain in the SCAC, "Rate filings are public . . . and CDI filings are easily accessible to the
20 public in reading rooms and on CDI's website." (*Id.* ¶ 89.) For this reason, the premium rate filings
21 of each of the Surety Defendants included as Exhibits 1-51 should be deemed incorporated into the
22 SCAC by reference. *See Ritchie*, 342 F.3d at 908 (9th Cir. 2003); *Hong*, 2018 WL 6331012, at *2.

23 The same holds true for Exhibit 52. The SCAC specifically cites language and quotes financial
24 data from Defendant Continental Heritage Co.'s "annual financial disclosures filed with the CDI."
25 (SCAC ¶ 237.) Therefore, such financial disclosures should be deemed incorporated by reference.

26 **III. CONCLUSION**

27 Defendants respectfully request that the Court take judicial notice of the documents
28 enumerated herein in consideration of Defendants' Motion to Dismiss.

1 Dated: June 12, 2020

Respectfully submitted,

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12 *Attorney for Defendant Golden State Bail*
13 *Association*

14 Dated: June 12, 2020

By: /s/ Paul J. Riehle

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24 **ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)**

25 I, Beatriz Mejia, attest that concurrence in the filing of this document has been obtained from
26 the other signatories. Executed on June 12, 2020 in Berkeley, California.

27 /s/ Beatriz Mejia
28 Beatriz Mejia